

**ASSEMBLY BILL**

**No. 1928**

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**Introduced by Assembly Member Torlakson**

February 17, 2010

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An act to amend Section 13557 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1928, as introduced, Torlakson. Vehicles: commercial driver's license: suspension or revocation.

(1) Existing law requires the Department of Motor Vehicles if it determines, by the preponderance of the evidence, all of specified facts, in the review of a determination that required the department to immediately suspend the privilege of a person to operate a motor vehicle for any one of specified reasons, to sustain the order of suspension or revocation, or if the person is under 21 years of age and does not yet have a driver's license, to delay issuance of that license for one year. A violation of the Vehicle Code is a crime.

This bill would add as one of those specified facts whether the person was driving a vehicle that requires a commercial driver's license and the person had 0.04 percent or more, by weight, of alcohol in his or her blood. By expanding the definition of a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 13557 of the Vehicle Code is amended  
2     to read:  
3     13557. (a) The department shall review the determination  
4     made pursuant to Section 13353, 13353.1, or 13353.2 relating to  
5     any person who has received a notice of an order of suspension or  
6     revocation of the person's privilege to operate a motor vehicle  
7     pursuant to Section 13353, 13353.1, 13353.2, 23612, or 13382.  
8     The department shall consider the sworn report submitted by the  
9     peace officer pursuant to Section 23612 or 13380 and any other  
10    evidence accompanying the report.  
11    (b) (1) If the department determines in the review of a  
12    determination made under Section 13353 or 13353.1, by a  
13    preponderance of the evidence, all of the following facts, the  
14    department shall sustain the order of suspension or revocation:  
15    (A) That the peace officer had reasonable cause to believe that  
16    the person had been driving a motor vehicle in violation of Section  
17    23136, 23140, 23152, or 23153.  
18    (B) That the person was placed under arrest or, if the alleged  
19    violation was of Section 23136, that the person was lawfully  
20    detained.  
21    (C) That the person refused or failed to complete the chemical  
22    test or tests after being requested by a peace officer.  
23    (D) That, except for the persons described in Section 23612  
24    who are incapable of refusing, the person had been told that his or  
25    her privilege to operate a motor vehicle would be suspended or  
26    revoked if he or she refused to submit to, and complete, the  
27    required testing.  
28    If the department determines, by a preponderance of the  
29    evidence, that any of those facts were not proven, the department  
30    shall rescind the order of suspension or revocation and, provided  
31    the person is otherwise eligible, return or reissue the person's  
32    driver's license pursuant to Section 13551. The determination of  
33    the department upon administrative review is final unless a hearing  
34    is requested pursuant to Section 13558.

1 (2) If the department determines in the review of a determination  
2 made under Section 13353.2, by the preponderance of the evidence,  
3 all of the following facts, the department shall sustain the order of  
4 suspension or revocation, or if the person is under 21 years of age  
5 and does not yet have a driver's license, the department shall delay  
6 issuance of that license for one year:

7 (A) That the peace officer had reasonable cause to believe that  
8 the person had been driving a motor vehicle in violation of Section  
9 23136, 23140, 23152, or 23153.

10 (B) That the person was placed under arrest or, if the alleged  
11 violation was of Section 23136, that the person was lawfully  
12 detained.

13 (C) That the person was driving a motor vehicle under any of  
14 the following circumstances:

15 (i) When the person had 0.08 percent or more, by weight, of  
16 alcohol in his or her blood.

17 (ii) When the person was under the age of 21 years and had 0.05  
18 percent or more, by weight, of alcohol in his or her blood.

19 (iii) When the person was under 21 years of age and had a  
20 blood-alcohol concentration of 0.01 percent or greater, as measured  
21 by a preliminary alcohol screening test, or other chemical test.

22 (iv) *When the person was driving a vehicle that requires a*  
23 *commercial driver's license and the person had 0.04 percent or*  
24 *more, by weight, of alcohol in his or her blood.*

25 If the department determines that any of those facts were not  
26 proven by the preponderance of the evidence, the department shall  
27 rescind the order of suspension or revocation and, provided that  
28 the person is otherwise eligible, return or reissue the person's  
29 driver's license pursuant to Section 13551. For persons under 21  
30 years of age, the determination of the department pursuant to this  
31 paragraph is final unless a hearing is requested within 10 days of  
32 the determination, which hearing shall be conducted according to  
33 the provisions of Section 13558. For persons over 21 years of age,  
34 the determination of the department upon administrative review  
35 is final unless a hearing is requested pursuant to Section 13558.

36 (c) The department shall make the determination upon  
37 administrative review before the effective date of the order of  
38 suspension or revocation.

39 (d) The administrative review does not stay the suspension or  
40 revocation of a person's privilege to operate a motor vehicle. If

1 the department is unable to make a determination on administrative  
2 review within the time limit in subdivision (c), the department  
3 shall stay the effective date of the order of suspension or revocation  
4 pending the determination and, if the person's driver's license has  
5 been taken by the peace officer pursuant to Section 13388, 23612,  
6 or 13382, the department shall notify the person before the  
7 expiration date of the temporary permit issued pursuant to Section  
8 13388, 23612, or 13382, or the expiration date of any previous  
9 extension issued pursuant to this subdivision, in a form that permits  
10 the person to establish to any peace officer that his or her privilege  
11 to operate a motor vehicle is not suspended or revoked.

12 (e) A person may request and be granted a hearing pursuant to  
13 Section 13558 without first receiving the results of an  
14 administrative review pursuant to this section. After receiving a  
15 request for a hearing, the department is not required to conduct an  
16 administrative review of the same matter pursuant to this section.

17 (f) A determination of facts by the department under this section  
18 has no collateral estoppel effect on a subsequent criminal  
19 prosecution and does not preclude litigation of those same facts  
20 in the criminal proceeding.

21 SEC. 2. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.